

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$19,415.00 in U.S. Currency,

Defendant.

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Civil No. 06-03134-CV-S-DW

**DEFAULT JUDGMENT AGAINST
LEVI SMITH AND FINAL ORDER OF
FORFEITURE IN FAVOR OF THE UNITED STATES**

A civil case against the defendant currency was filed in federal court on March 31, 2006, because Claimant Levi Smith filed an administrative claim with the Drug Enforcement Administration. The Warrant and Summons for Arrest of Articles in Rem was issued by the Court on April 12, 2006.

Attorney Teresa Grantham had previously contacted the U.S. Attorney's Office, and told the undersigned AUSA that she would represent Smith on the forfeiture matter. Grantham was personally served with the Complaint and Warrant and Summons for Arrest in Rem. Grantham later called to say that she would not accept service for Smith, so on May 31, 2006, the United States prepared a package for personal service on Smith at his last known address.

The U.S. Marshal Service sent the Complaint and Warrant and Summons for Arrest in Rem to Levi Smith by certified mail on June 23, 2006. The package was sent again on June 27, July 20, and July 27, 2006. The package was returned to the undersigned as "Unable to execute and returned unclaimed."

The United States also contacted the Greene County Prosecutor's Office in attempt to

obtain a more recent address for Levi Smith, but those efforts also failed. There is no listing for Levi Smith in the June, 2006 Springfield telephone directory.

The publication process, designed to give notice to third parties, has been completed. Notice of publication was filed with the Court on June 13, 2006. The Department of Justice published public notice of the case against the currency in the *Springfield News-Leader* published in Springfield, Greene County, Missouri. This is the newspaper which serves the area where potential claimant Levi Smith gave his last-known address.

Because all attempts have been made to achieve service upon Levi Smith, and he has not filed a claim in the judicial case, entry of default judgment against Mr. Smith is now appropriate. Due process requires the United States to provide notice “reasonably calculated, under all the circumstances” to inform interested parties of the litigation, and to give them an opportunity to be heard. *United States v. Five Thousand Dollars in U.S. Currency*, 184 F.3d 958, 960 (8th Cir. 1999), *quoting Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-14 (1950). The United States has done everything within its power to give Mr. Smith notice of the forfeiture proceedings. Due process has been satisfied, so entry of default judgment pursuant to Rule 55(b)(2), Fed.R.Civ.P., against Mr. Smith is appropriate. *United States v. One Hundred Four Thousand Six Hundred Seventy-Four Dollars*, 17 F.3d 267, 269 (8th Cir. 1994).

In addition to extinguishing the claim of Mr. Smith, the United States has attempted to give notice to interested third-parties. Notice of this action was published on May 17, 24, and 31, 2006, in the *Springfield News-Leader*, as required by Rule C(4) of the Supplemental Rules of Civil Procedure for Certain Admiralty and Maritime Claims. No third party claims were filed. Therefore, any third-party interests are barred by failure of those parties to file a timely petition.

Entry of a Final Order of Forfeiture is appropriate at this time. It is therefore

ORDERED THAT default judgment be entered against Levi Smith.

IT IS FURTHER ORDERED THAT all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law.

IT IS FURTHER ORDERED THAT the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

IT IS FURTHER ORDERED THAT the Clerk of the Court shall forward three certified copies of this Order to the United States Attorney's Office, Attention: Cynthia J. Hyde, Assistant U.S. Attorney 901 St. Louis, Suite 500, Springfield, MO 65806-2511.

IT IS SO ORDERED.

/s/ DEAN WHIPPLE
Dean Whipple, Judge
United States District Court

Dated: October 4, 2006